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No. 06-1463

IN THE
Supreme Court of the United States

ARNOLD M. PRESTON,

Petitioner,

v.

ALEX E. FERRER,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether the Federal Arbitration Act and *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) preempt the holding in this case, voiding an interstate arbitration agreement under the California Talent Agencies Act?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 2

STATEMENT OF THE CASE 3

SUMMARY OF THE ARGUMENT 8

ARGUMENT 9

A. Under the FAA, the Arbitrator Decides Issues of Legality of the Entire Contract 11

B. State Law Abrogation of the Right to Arbitrate is Subject to FAA Preemption 12

C. The Express Intent of the Parties Was That the Arbitrator Shall Decide the Validity Issue 17

CONCLUSION 23

TABLE OF AUTHORITIES

CASES

Page(s)

Allied-Bruce Terminix Companies, Inc. v. Dobson, 513 U.S. 265 (1995)..... 10
AT & T Technologies, Inc. v. Communications Workers of America, 475 U.S. 643 (1986)..... 21
Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. MedPARTNERS, Inc., 203 F.R.D. 677 (S.D.Fla.2001)..... 20
Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006)..... i, 3, 6, 8, 11
Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001)..... 9, 16
Citizens Bank v. Alafabco, Inc., 539 U.S. 52 (2003)..... 10
Contec Corporation v. Remote Solution Co., Ltd., 398 F.3d 205 (2d Cir. 2005)..... 20
Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213 (1985)..... 9
Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996)..... 10
Equal Employment Opportunity Commission v. Waffle House, Inc., 534 U.S. 279 (2002)..... 14, 15
Ferrer v. Preston,145 Cal.App.4th 440 (2006)..... 1
First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995)..... 20
Gilmer v. Interstate/ Johnson Lane Corporation, 500 U.S. 20 (1991)..... 9, 12–15
Green Tree Financial Corp.-Alabama v. Randolph, 531 U.S. 79 (2000)..... 10

Green Tree Financial Corp. v. Bazzle, 539 U.S. 444 (2003) 11
Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995) 10, 17, 21
Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985) 9, 21
Moses H. Cone Memorial Hospital v. Mercury Construction Corporation, 460 U.S. 1 (1983) 11
Pacificare Health Systems, Inc. v. Book, 538 U.S. 401 (2003) 11
Perry v. Thomas, 482 U.S. 483 (1987) 9, 16
Prima Paint Corporation v. Flood & Conklin Mfg. Co., 388 U.S. 395 (1967) 11
Qualcomm Incorporated v. Nokia Corporation, 466 F.3d 1366 (Fed.Cir. 2006) 20
Rodriguez De Quijas v. Shearson/American Express, Inc., 490 U.S. 477 (1989) 9, 13
Saturn Distribution Corporation v. Paramount Saturn, Ltd., 326 F.3d 684 (5th Cir. 2003) 9, 15, 16
Shearson/American Express, Inc. v McMahon, 482 U.S. 220 (1987) 13
Sinnamon v. McKay (1983) 142 Cal.App.3d 847 ... 8
Southland Corporation v. Keating, 465 U.S. 1 (1984) 1, 10, 16
Terminix International Company, LP v. Palmer Ranch Limited Partnership, 432 F.3d 1327 (11th Cir. 2005) 19
United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U.S. 574 (1960) 21
Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468 (1989) 10, 17

CONSTITUTION

U.S. Constitution, Article VI, clause 2 ..... 1, 16

STATUTES

9 U.S.C. §2 ..... 1, 2, 6, 16
9 U.S.C. §10 21
28 U.S.C. §1257(a) 1

California Labor Code §98.2 8
California Labor Code §229 16
California Labor Code §1700 et. seq 11
California Labor Code §1700.44(a) 2, 3, 5, 6

OTHER

AAA Commercial Rule R-7 18

OPINIONS BELOW

The *Order Denying Review* by the California Supreme Court was entered on February 14, 2007. Petition for Writ of Certiorari Appendix ("Pet. App.") 1a.

The *majority opinion* of the California Court of Appeal dated November 30, 2006, was published as *Ferrer v. Preston* (2006) 145 Cal.App.4th 440 and is set forth at Pet. App. 2a–12a.

The *dissent* by the Hon. Miriam A. Vogel, Justice, California Court of Appeal, is set forth at Pet. App. 12a–17a.

JURISDICTION

The decision of the California Courts was final upon the denial of review by the California Supreme Court, entered on February 14, 2007. Pet. App. 1a. The Petition for a Writ of Certiorari was filed on May 4, 2007 and was granted on September 25, 2007.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a), as it involves an issue of Federal preemption under the Supremacy Clause of the U.S. Constitution (Article VI, clause 2) and the Federal Arbitration Act, 9 U.S.C. §2. See *Southland Corporation v. Keating*, 465 U.S. 1 (1984).

STATUTES INVOLVED

Federal Arbitration Act

9 U.S.C. §2, states, in pertinent part:

> A written provision in any. . .contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract. . .or the refusal to perform the whole or any part thereof. . . .shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

California Labor Code

California Labor Code §1700.44(a), states, in pertinent part:

> In cases of controversy arising under this chapter, the parties involved shall refer the matters in dispute to the Labor Commissioner, who shall hear and determine the same, subject to an appeal within 10 days after determination, to the superior court where the same shall be heard *de novo*.

STATEMENT OF THE CASE

This case concerns the issue whether the Federal Arbitration Act preempts California Labor Code §1700.44 (a), as construed by the California Court of Appeal.

The Court of Appeal held that §1700.44(a) abrogated Petitioner's right to arbitrate by granting exclusive jurisdiction to the California Labor Commissioner to determine the validity of an artist's personal management contract. Petitioner contends that the Court of Appeal misinterpreted and failed to adhere to *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006), because Respondent disputed the validity of the entire contract, but made no challenge to the arbitration clause itself.

Respondent Alex E. Ferrer is a former Florida Circuit Court Judge who now makes his living as the star of *Judge Alex*, a television program syndicated nationwide by Twentieth Century Fox, in which Respondent arbitrates petty civil disputes as a form of entertainment. Pet. App 3a.

Petitioner Arnold M. Preston ("Preston") is an attorney, who renders services as a personal manager, advising and counseling artistic personnel in the motion picture-television industry. Pet. App. 3a, 12a; J.A. 9.

In March, 2002, Mr. Preston and Judge Ferrer entered into a written contract ("Management Agreement") which provides for payment of a fee on

Judge Ferrer's earnings from *Judge Alex*. J.A. 8–19.

The Management Agreement included a standard American Arbitration Association provision calling for arbitration of disputes. J.A. 17, ¶13. The arbitration clause specifically provided that disputes about the "validity" and "legality" of the contract would be decided by arbitration.

Judge Ferrer resides in Florida and tapes the *Judge Alex* television program in Texas. Pet. App. 11a. Mr. Preston had his office in California. *Id.* As it happened, Judge Ferrer was in Nevada when he signed the Management Agreement. *Id.* As such, the *interstate* nature of the contract has never been in dispute.

When *Judge Alex* went on the air, Judge Ferrer refused to pay the management fee, so on June 4, 2005, Mr. Preston commenced a proceeding with the American Arbitration Association in Los Angeles, California. J.A. 5–19.

Judge Ferrer responded on July 5, 2005, by filing an action with the California Labor Commissioner, challenging the legality of the *entire management contract* under the California Talent Agencies Act. J.A. 20–23. Among other things, his Petition asked for a declaration the Management Agreement is void, and based thereon, for an order staying the arbitration. J.A. 23.

The Labor Commissioner's hearing officer determined the Ferrer petition asserted a "colorable

basis for exercise of the Labor Commissioner's jurisdiction...." J.A. 33. However, she also determined that she lacked the authority to stay the arbitration. J.A. 32.

The arbitrator set a hearing on the merits for January 26, 2006. J.A. 30. To head the merits hearing off, on November 2, 2005, Judge Ferrer filed suit in the Los Angeles Superior Court, seeking an injunction against the arbitration. J.A. 26–29. On November 8, 2005, Mr. Preston responded by filing a Motion to Compel Arbitration in the Superior Court. Pet. App. 4a.

On December 7, 2005, the Superior Court denied Mr. Preston's Motion to Compel Arbitration, issued the injunction against the arbitration, and ordered that the legality of the entire contract under the Talent Agencies Act would be decided by the Labor Commissioner, not the Arbitrator. Pet. App. 18a–27a.

During all of these proceedings, Judge Ferrer's challenge to arbitration was based on his claim *the entire Management Agreement was invalid*, and at no time did he make any challenge to the validity of the arbitration clause. Pet. App. 14a. Indeed, the undisputed evidence was that Judge Ferrer initialed every page of the Management Agreement, including the page bearing the arbitration clause. Pet. App. 13a; J.A. 8–19.

The California Court of Appeal affirmed in a 2-1 decision, based on California Labor Code §1700.44(a), which the Court held gives the Labor Commissioner

exclusive jurisdiction to hear disputes under the Talent Agencies Act. The Court of Appeal stated:

> The question before us is who has original jurisdiction to make the determination as to the validity of the parties' contract. Defendant contends that the question of the contract's validity should be determined by the arbitrator. . . .We disagree.
>
> The parties' contract included a standard AAA arbitration clause, including a stipulation that the parties are to arbitrate any attack on the "validity or legality" of the contract. However, as interpreted by the courts, [Labor Code] section 1700.44, subdivision (a), vests exclusive original jurisdiction in the Commissioner to resolve issues arising under the Act. . . .

Pet. App. 6a.

The dissenting opinion by Justice Miriam A. Vogel argued that the Federal Arbitration Act (9 U.S.C. §2) and *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006) ("*Buckeye*") preempted the majority decision, stating:

> Because it is undisputed (correctly) that the contract before us is governed by the FAA . . . it follows necessarily that the arbitrator and not the court must

> determine the gateway issues. My colleagues' contrary conclusion – based on the fact that the *Buckeye* court did not consider whether the issue should go first to a state administrative agency – ignores *Buckeye's* holding that its rules trump conflicting state procedures.

Pet. App. 16a.

The majority of the Court of Appeal did not dispute the applicability of the Federal Arbitration Act, but distinguished *Buckeye* on the grounds that the Talent Agencies Act vests initial jurisdiction in an *administrative agency*, whereas *Buckeye* involved an attempt to avoid arbitration by filing a lawsuit in a court:

> [Preston] also argues that the Federal Arbitration Act. . . preempts California law requiring the Commissioner to first adjudicate the legality of the contract....
>
> *Buckeye* is inapposite . . . [because it] did not involve an administrative agency with exclusive jurisdiction over a disputed issue. *Buckeye* did not consider whether the FAA preempts application of the exhaustion doctrine. . . .

Pet. App. 10a.

Decisions of the California Labor Commissioner are subject to a trial *de novo* in the Superior Court

pursuant to California Labor Code §§ 98.2 and 1700.44(a). See *Sinnamon v. McKay* (1983) 142 Cal.App.3d 847. As such, the Labor Commissioner hearing is just an *initial step* in a protracted adjudication process which usually winds up, like this case did, in the California court system.

Thus, absent a reversal by this Court, pursuant to the California Court of Appeal decision this case would be remanded to the Labor Commissioner, where an administrative hearing would be conducted on the legality of the entire contract, possibly followed by a trial *de novo* in the Superior Court on the same issue, possibly followed by yet another appeal.

In other words, Mr. Preston's arbitration could ultimately be delayed until *four to five years* after the filing of his original arbitration demand, and only take place after he has incurred oppressive legal fees litigating before the Labor Commissioner, *de novo* in the Superior Court, and a second time before the California appellate courts.

SUMMARY OF THE ARGUMENT

Since this case involves a challenge to the legality of the *entire contract*, with no challenge to the arbitration clause itself, state law is preempted and the arbitrator decides the issue of legality. *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006).

Another provision of the California Labor Code, which purported to abrogate the right to arbitrate wage claims and channel them to a *judicial* tribunal,

was held preempted by the Federal Arbitration Act ("FAA"). *Perry v. Thomas*, 482 U.S. 483 (1987).

The Court of Appeal's distinction, that the California Labor Code grants initial jurisdiction to an *administrative* tribunal instead of a court, does not avoid preemption under the FAA. *Gilmer v. Interstate/ Johnson Lane Corporation*, 500 U.S. 20, 28-29 (1991) ("[T]he mere involvement of an administrative agency in the enforcement of a statute is not sufficient to preclude arbitration."); *Saturn Distribution Corp. v. Paramount Saturn, Ltd.*, 326 F.3d 684, 687 (5th Cir. 2003)(State law which abrogates the right to arbitration in favor of administrative tribunal is preempted by the FAA).

ARGUMENT

Congress enacted the FAA to counter judicial hostility toward arbitration agreements, a bias inherited from the English courts, which were jealous of any usurpation of their jurisdiction. *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001).

Although some early decisions of this Court demonstrated a reluctance to abandon the traditional judicial hostility toward arbitration, that attitude was subject to steady erosion, and the "outmoded presumption of disfavoring arbitration proceedings" was completely cast aside by the 1980s. *Rodriguez De Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 480-481 (1989); *Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 2 13

(1985).

In enacting the Federal Arbitration Act, Congress declared a national policy favoring arbitration "and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Southland Corporation v. Keating*, 465 U.S. 1, 10 (1984); *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 687 (1996).

Preemption of anti-arbitration state laws extends to any transaction "involving commerce," since Congress intended the Act's reach to be coextensive with that of the Commerce Clause. *Allied-Bruce Terminix Companies, Inc. v. Dobson*, 513 U.S. 265, 274 (1995). Because the FAA provides for the enforcement of arbitration agreements within the full reach of the Commerce Clause, it governs every transaction "within the flow of interstate commerce." *Citizens Bank v. Alafabco, Inc.*, 539 U.S. 52, 56 (2003).

Likewise, because of the strong Federal policy favoring arbitration, statutory claims, even those involving "important social policies," are subject to arbitration. *Green Tree Finanical Corp.-Alabama v. Randolph*, 531 U.S. 79, 89–90 (2000).

The ultimate goal of the Federal Arbitration Act is to ensure "'that private agreements to arbitrate are enforced according to their terms.'" *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 54 (1995), quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489

U.S. 468, 478 (1989). In furtherance of that goal, all doubt as to the scope of arbitrable issues is to be resolved in favor of arbitration. *Moses H. Cone Memorial Hospital v. Mercury Construction Corporation*, 460 U.S. 1, 24–25 (1983); *PacifiCare Health Systems, Inc. v. Book*, 538 U.S. 401, 407 n.2 (2003); *Green Tree Financial Corp. v. Bazzle.* 539 U.S. 444, 452 (2003).

A. Under the FAA, the Arbitrator Decides Issues of Legality of the Entire Contract

The sole legal basis for Judge Ferrer's resistance to arbitration is his claim that the *entire contract* is void under California Labor Code §1700 *et. seq.*, also known as the Talent Agencies Act. Pet. App. 3a–10a; J.A. 23, 26–29.

This argument was adopted and articulated as the basis for decision by the Los Angeles Superior Court (Pet. App. 18a–27a) and it formed an essential link in the chain of reasoning of the California Court of Appeal. Pet. App. 6a–10a.

Petitioner respectfully submits that the Court of Appeal erred, because only attacks on the *arbitration agreement itself* are decided by the judiciary, whereas allegations that the *entire contract* is void or illegal are decided by the arbitrator. *Prima Paint Corporation v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403–404 (1967).

As stated in *Buckeye, supra,* 546 U.S. at

445–446:

> [A]s a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. . . .[U]nless the challenge is to the arbitration clause itself, the issue of the contract's validity is considered by the arbitrator in the first instance.... [T]his arbitration law applies in state as well as federal courts. . . .[B]ecause respondents challenge the Agreement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.

B. State Law Abrogation of the Right to Arbitrate is Subject to FAA Preemption

The California Court of Appeal distinguished *Buckeye* on the grounds that *Buckeye* involved abrogation of the right to arbitrate in favor of a *judicial* forum, whereas Judge Ferrer sought to require adjudication of his attack on the entire contract before an *administrative* tribunal. Pet. App. 10a–11a.

However, the reasoning of the Court of Appeal clashes with *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S. 20 (1991) ("*Gilmer*"), wherein

this Court ordered arbitration of a claim based on the Age Discrimination in Employment Act ("ADEA").

In *Gilmer,* like this case, an adm inistrative agency (the EEOC) had initial jurisdiction and private claimants had an obligation to exhaust administrative remedies before proceeding to court. *Gilmer*, supra, 500 U.S. at 27. Despite the exclusive administrative jurisdiction of the EEOC, this Court held that the employee would be required to arbitrate his ADEA claim:

> We. . .are unpersuaded by the argument that arbitration will undermine the role of the EEOC in enforcing the ADEA. . . . [T]he mere involvement of an administrative agency in the enforcement of a statute is not sufficient to preclude arbitration. For example, the Securities Exchange Commission is heavily involved in the enforcement of the Securities Exchange Act of 1934 and the Securities Act of 1933, but we have held that claims under both of those statutes may be subject to compulsory arbitration. *See Shearson/American Express Inc. v. McMahon*, 482 U.S. 220, 107 S.Ct. 2332, 96 L.Ed.2d 185 (1987); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989).

Gilmer, supra, 500 U.S. at 28–29.

The present matter is analogous to *Gilmer*. On its face, Judge Ferrer's Petition to the Labor Commissioner is nothing more than a private, civil pleading, seeking an adjudication that the *entire contract is invalid* and, based thereon, a ruling that Respondent does not have to honor his promise to arbitrate. J.A. 20–23.

The fact that Judge Ferrer was the Petitioner in the Labor Commissioner proceeding (*Id.*) and he was Plaintiff in the Superior Court action (J.A. 26) distinguishes this case from *Equal Employment Opportunity Commission v. Waffle House, Inc.*, 534 U.S. 279 (2002)("*Waffle House*"), where the EEOC filed an enforcement action *in its own name*. The decision in *Waffle House* clearly turned on the identity of the EEOC as the *named Plaintiff*, and its status as non-signatory to the arbitration agreement. *Waffle House*, *supra*, 534 U.S. at 294. By contrast, in this matter the Labor Commissioner is *not a party*; Judge Ferrer filed the administrative and the judicial actions in his own name. J.A. 26.

Petitioner submits that *Waffle House* ultimately hinges on the exercise of *discretion* by the administrative enforcement agency. As noted in the *Waffle House* opinion, the EEOC received 79,896 charges of employment discrimination in 2000, but filed only 291 lawsuits. *Waffle House*, *supra*, 534 U.S. at 290 n.7. As such, the EEOC exercised considerable discretion in deciding which cases to pursue, and allocated its resources to prosecute cases *in its own name* only when those cases were likely to benefit the public in general. Once that decision was made, the

EEOC could proceed to court and it was not bound by any private arbitration agreements.

Here, by contrast, the Labor Commissioner did not file an action in her own name. Based on Judge Ferrer's pleading, the hearing officer merely found there was a "colorable" case based on Judge Ferrer's pleadings (J.A. 32–33), but there was never any evaluation of evidence, much less any decision by the Labor Commissioner to file a lawsuit in her own name.

As such, this case is analogous to *Gilmer*, and not *Waffle House*.

The specific question of whether the existence of an administrative tribunal negates the right to arbitrate was heard and decided in *Saturn Distribution Corporation v. Paramount Saturn, Ltd.*, 326 F.3d 684 (5th Cir. 2003), a case wherein the party resisting arbitration asserted that the Texas Motor Vehicles Board ("TMVB") had exclusive jurisdiction to hear the case. The United States Court of Appeals for the Fifth Circuit rejected that theory, holding:

> There are no legal restraints external to the parties' arbitration agreement that foreclose the arbitration of their dispute because the TMVB does not have exclusive jurisdiction of contractual disputes between franchisors and franchisees in the motor vehicle industry. [citations] Even if it did, the strong federal policy favoring arbitration

> preempts state laws that act to limit the availability of arbitration. *Southland Corp. v. Keating*, 465 U.S. 1, 16, 104 S.Ct. 852, 79 L.Ed.2d 1 (1984) (holding that through the FAA, "Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements"); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001) (discussing the holding and continued vitality of *Southland*).

Saturn Distribution Corporation, supra, 326 F.3d at 687.

In *Perry v. Thomas, supra*, 482 U.S. at 490–491, this Court invalidated another provision of the California Labor Code which purported to abrogate private arbitration agreements:

> [T]he present appeal addresses the pre-emptive effect of the Federal Arbitration Act, a statute that embodies Congress' intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause. . . .This clear federal policy places § 2 of the Act in unmistakable conflict with California's [Labor Code] § 229 requirement that litigants be provided a judicial forum for resolving wage disputes. Therefore, under the Supremacy Clause, the state statute must give way.

C. The Express Intent of the Parties Was That the Arbitrator Shall Decide the Validity Issue

It is now well settled that the primary purpose of the Federal Arbitration Act is to ensure that private agreements to arbitrate "'are enforced according to their terms.'" *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 54 (1995), quoting *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 478 (1989).

Applying that doctrine to Messrs. Preston and Ferrer is simple, because the Management Agreement expressly states that the "validity or legality" of the contract is subject to arbitration:

> . . . In the event of any dispute under or relating to the terms of this agreement, or the breach, *validity, or legality thereof*, it is agreed that the same shall be submitted to arbitration to the American Arbitration Association in the city of Los Angeles, California, and in accordance with the rules promulgated by the said association. . . .

J.A. 17, ¶13 (Emphasis added).

Even if the "validity or legality" language was not present, the Preston/Ferrer agreement *incorporates the AAA Rules*, and those Rules contain an express agreement to arbitrate issues of the "validity" of the

contract. The relevant provisions in the AAA Commercial Rules state:

> R-7. Jurisdiction
>
> (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
>
> (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
>
> (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

See http://www.adr.org/sp.asp.

The incorporation of the AAA Rules has been discussed in several recent cases, and a body of case law has emerged that such "incorporation" of the Rules vests the arbitrator with the power to decide issues of arbitrability. As stated in *Terminix International Company, LP v. Palmer Ranch Limited Partnership*, 432 F.3d 1327, 1329, 1332 (11th Cir. 2005):

> This is another arbitration dispute in which the parties are litigating whether or not they should be litigating. The familiar scenario is that the parties agree in writing to arbitrate any disputes between them, but then one party files a lawsuit taking the position that the agreement to arbitrate is inapplicable, invalid, or unenforceable for one reason or another. . . .
>
> Here, we are able to avoid the usual process. . .[because] the parties have agreed that the arbitrator will answer this question, by providing (in all three of the arbitration clauses at issue) that "arbitration shall be conducted in accordance with the Commercial Arbitration Rules. . .of the American Arbitration Association". . .[and the AAA Rules provide that] "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the. . .validity of the arbitration agreement.". . . .By incorporating the AAA Rules. . .the

> parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid.

See also, Qualcomm Incorporated v. Nokia Corporation, 466 F.3d 1366, 1373 (Fed.Cir. 2006)("[T]he 2001 Agreement, which incorporates the AAA Rules...clearly and unmistakably shows the parties' intent to delegate the issue of determining arbitrability to an arbitrator."); *Contec Corporation v. Remote Solution Co., Ltd.*, 398 F.3d 205, 208 (2d Cir. 2005) (incorporation of Rule 7 of the AAA Commercial Arbitration Rules serves as "clear and unmistakable evidence of the parties' intent" to arbitrate validity of the contract and arbitrability of issues); *Brandon, Jones, Sandall, Zeide, Kohn, Chalal & Musso, P.A. v. MedPARTNERS, Inc.*, 203 F.R.D. 677, 685 (S.D.Fla.,2001)("[T]he parties contracted via. . . incorporation. . .the Rules of the AAA. . . .Under [former AAA] Rules 1 and 8, the Arbitrators have the authority over arbitrability determinations and other jurisdictional questions.").

The requirement of judicial deference to the intent of parties who have agreed to "arbitrate arbitrability" was articulated by a unanimous Court in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995):

> We believe the answer to the "who" question. . . is fairly simple. Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, see, e.g.,

> *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 57, 115 S.Ct. 1212, 1216, 131 L.Ed.2d 76 (1995); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626, 105 S.Ct. 3346, 3353, 87 L.Ed.2d 444 (1985), so the question "who has the primary power to decide arbitrability" turns upon what the parties agreed about *that* matter. Did the parties agree to submit the arbitrability question itself to arbitration? If so, then the court's standard for reviewing the arbitrator's decision about *that* matter should not differ from the standard courts apply when they review any other matter that parties have agreed to arbitrate. See *AT & T Technologies, Inc. v. Communications Workers*, 475 U.S. 643, 649, 106 S.Ct. 1415, 1418, 89 L.Ed.2d 648 (1986) (parties may agree to arbitrate arbitrability); *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583, n. 7, 80 S.Ct. 1347, 1353, n. 7, 4 L.Ed.2d 1409 (1960) (same). That is to say, the court should give considerable leeway to the arbitrator, setting aside his or her decision only in certain narrow circumstances. *See, e.g.*, 9 U.S.C. § 10.

If Judge Ferrer had honored his promise to arbitrate, including the specific promise to arbitrate the "validity or legality" of the contract, this case would have been expeditiously and economically

resolved at a two-day hearing on January 26 and 27, 2006. J.A. 30. Instead, the matter has been contested before the Arbitrator, the Labor Commissioner, the Los Angeles Superior Court, the California Court of Appeal, the California Supreme Court, and now before the highest Court in the land.

Congress' goal in enacting the Federal Arbitration Act was to enforce private arbitration agreements according to their terms, on a uniform, nationwide basis, and thereby provide for the efficient, expeditious, and economical resolution of disputes. As illustrated by this case, that goal is utterly defeated by denying the arbitral forum based on state law.

As stated by California Court of Appeal Justice Miriam Vogel, in her dissent:

> When a former judge and a lawyer enter a contract in which they agree that any dispute about that contract will be resolved by arbitration, I think they ought to be bound by that agreement. . .
>
> Instead of the speedy, efficient, and relatively inexpensive procedure contemplated by the parties' contract, my colleagues have permitted Ferrer to cause a delay of years and triple or quadruple the parties' expenditures. . . .That is not how it is supposed to work.

Pet. App. 12a, 17a.

CONCLUSION

The judgment of the California Court of Appeal should be *reversed*.

Respectfully submitted,

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